

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RASHA BROWN and LLOYD WATSON,

Plaintiff(s),

-against-

TERRANCE WEBBER and STEVENS TRANSPORT,
INC.,

Defendant(s).

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7:18-CV-9618 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiffs Rasha Brown and Lloyd Watson commenced this action against Defendants on or about April 25, 2018, asserting claims sounding in negligence. (ECF No. 1.) By Order to Show Cause (“OSC”), dated March 6, 2020, the Court directed Plaintiffs to show cause on or before April 6, 2020, why the action should not be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b)”). To date, Plaintiffs have not responded.

A review of the docket reveals Plaintiffs have taken little action to prosecute their claims since April 2018 when Plaintiffs filed their complaint. The action was initially filed in the Eastern District of New York and subsequently transferred to the Southern District of New York. (*See* Docket Entry dated October 3, 2018.) Nearly two years later, the Court issued its OSC. Despite the passage of more than six months, Plaintiff has failed to respond to the Court’s OSC.

When determining whether to dismiss an action pursuant to Rule 41(b), courts have considered whether: (1) plaintiff’s failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff’s right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions.

U.S. ex rel. Drake v. Norden Sys., Inc., 375 F.3d 248, 254 (2d Cir. 2004) (internal citations omitted). No one

factor is determinative. *Id.* (citing *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993)). Having considered the relevant factors, the Court determines that dismissal of this action is warranted. Plaintiffs' delays have been significant in duration and Plaintiffs have failed to communicate with the Court since April 2018 (more than two years ago). Accordingly, it is hereby Ordered that the action is DISMISSED without prejudice for failure to prosecute.

The Clerk of the Court is respectfully directed to terminate the action and serve a copy of this Order upon Plaintiffs' counsel, and to show proof on the docket.

Dated: October 26, 2020
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge